2003

State of Utah v. Steve Howard Thomas : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	**Case No. 20030409-CA**
v.	:	
STEVE HOWARD THOMAS,	:	
Defendant/Appellant.	:	

BRIEF OF APPELLEE

APPEAL FROM CONVICTIONS ON ONE COUNT OF AGGRAVATED ARSON, A FIRST DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-6-103 (1999); THREE COUNTS OF ARSON, A SECOND DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-6-102 (1999); ONE COUNT OF BURGLARY, A SECOND DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-6-202 (Supp. 2002); ONE COUNT OF ARSON, A THIRD DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-6-102 (1999); AND ONE COUNT OF ATTEMPTED ARSON, A THIRD DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-6-102 (1999), IN THE FIFTH JUDICIAL DISTRICT, BEAVER COUNTY, THE HONORABLE J. PHILIP EVES PRESIDING

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JURISDICTION AND NATURE OF PROCEEDINGS

Defendant appeals his convictions for multiple felonies, including aggravated arson, a first degree felony. This Court has jurisdiction pursuant to the "pour-over" provisions of Utah Code Ann. § 78-2a-3(2)(j) (Supp. 2002).

ISSUE ON APPEAL AND STANDARD OF REVIEW

Should this Court reach defendant's claim that the trial court improperly denied his motion to suppress where defendant's two-sentence recitation of the relevant facts and his six-sentence argument render his claim inadequately briefed?

No standard of review applies to this issue.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

No constitutional provisions, statutes, or rules are determinative of this appeal.

STATEMENT OF THE CASE

On February 27, 2003, defendant was charged by amended information with one count of aggravated arson, a first-degree felony; three counts of arson, a second-degree felony; one count of burglary, a second-degree felony; one count of arson, a third-degree felony; and two counts of attempted arson, a third-degree felony. R. 223-224. After a preliminary hearing, defendant was bound over on all charges. R. 42-43.

Before trial, defendant moved to suppress all statements made by him to police officers after he was placed in police custody. R. 108-10. He also moved to suppress statements made to his mother during a telephone call from jail after he was arrested, and a letter of apology he wrote to the fire victims at about the same time. R. 108-10, 114-20; R. 350:8. After an evidentiary hearing, the trial court admitted all statements except defendant's pre-*Miranda* confession. R. 155-156.

A two-day trial followed, after which defendant was found guilty of all charges except one of the attempted arson charges. R. 289-292, 326-28. Defendant was sentenced to the statutory terms on each conviction, sentences to run concurrently R. 327.

Defendant timely appealed. R. 337. The supreme court transferred the matter to this Court. R. 347.

STATEMENT OF FACTS[1]

The crimes. On August 3, 2002, the Beaver County Sheriff's Office responded to reports of six fires in the Beaver area. R. 351:130, 135-37, 140-41; R. 352:237-38. One of the fires involved a mobile home trailer owned by Kathy and Alan Green. R. 351:132-36; R. 352:237-38. The rest were fires started in the haystacks of ranchers Clark Bradshaw, Pete Yardley, Sam Kerksiek, Roland Yardley, and Orson Blackner. R. 351:130, 136-38, 140-41.[2] The fires were reported at 8:46 p.m., 8:54 p.m., 9:13 p.m., 9:20 p.m., 9:34 p.m., and 11:09 p.m., respectively. R. 351:163-64. On August 4, 2002, officers learned of another fire in the haystack of John Smith. R. 351:132, 138.

Five witnesses saw a silver-colored older model Buick with a green auto dealer sales tag and a temporary licence plate in the vicinity of several of the fires. R. 351:130-31, 144, 161-62, 179, 183-84, 190-91, 195-97, 203-04, 225-27. Two saw defendant aggressively driving the car at about 6:15 p.m. on I-15 and then saw the car exiting the highway at the Beaver exit. R. 351:179, 182-84, 190-91. A third witness was driving by the Green trailer at about 7:30 p.m. and saw the car there. R. 351:225-26. Shortly thereafter, the witness saw the same car approach her from behind and then pass her, going about 50 miles per hour. R. 351:226-27. A fourth witness, who lives near Clark Bradshaw's property, saw the car speed by him as he was working on his farm, and then,

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[1]The facts of the crimes are recited in the light most favorable to the jury's verdicts. *See State v. Litherland,* 2000 UT 76, ¶ 2, 12 P.3d 92.

[2]Roland appears throughout the record as both "Roland" and "Rowland."

a few minutes later, speed by him going in the opposite direction. R. 351:195-96. Almost immediately, the witness noticed a haystack on fire. R. 351:197. Finally, a fifth witness saw the car near John Smith's property at about 9:00 p.m. R. 351:203. The witness saw the driver exit the car, walk toward haystack, return to the car, return to the haystack, and then get back into his car and leave. R. 351:204.

After investigation, Sergeant Cameron Noel, of the Beaver County Sheriff's Office, identified defendant as the owner of a vehicle similar to the one witnesses had described. R. 351:143, 223. Sergeant Noel then prepared a search warrant for defendant's vehicle and home in Enoch on August 5. R. 351:143-44.

On August 5, 2002, Sergeant Noel, along with Agent Todd Hohbein, of the State Fire Marshal's Office, Beaver County Deputy Sheriff Cody Black, and several other officers served the warrant at defendant's home. R. 351:143-44; R. 352:278, 310. Defendant was handcuffed and, a short while later, was read his *Miranda* rights. R. 351:145. Deputy Black then asked defendant, "What's going on?" R. 352:280. Defendant "said he was just being a dumb ass." R. 352:280. "[H]e said that Roland had owed him some money and that he figured that with the money that he owed him with interest it was worth about a haystack." R. 352:280.

After the search, defendant was brought to the Iron County Sheriff's Office for a taped interview with Sergeant Noel and Agent Hohbein. R. 351:146. Before the interview, defendant was reminded of his *Miranda* rights. R. 351:146. Defendant agreed to talk. R. 351:146.

During the interview, defendant admitted that he was responsible for the Blackner and Yardley fires. R. 351:146; R. 352:322; St. Exh. 15 at 2, 4, 12, 18-19. Defendant seemed almost "proud of lighting" Roland Yardley's haystack on fire. R. 351:151. He said of Pete Yardley, "I just never liked that guy, I guess." St. Exh. 15 at 12.

After initially denying that he committed the Green fire, defendant admitted that he had entered the trailer through a broken window, and, consistent with the evidence found by Agent Hohbein, that he had started fires in both the middle and back bedrooms. R. 351:147-48; R. 352:283, 285-86, 290-92; St. Exh. 15 at 6-10. Defendant recalled that his brother had lived in the trailer but had recently been told to leave. R. 352:292.

Defendant initially did not recall starting the fire at Clark Bradshaw's place. R. 351:149. However, after "some of the questioning and refreshing his memory, he admitted to setting the fire." R. 351:150.

Concerning the Smith fire, defendant was asked whether his tire prints would be found there. St. Exh. 15 at 10. Defendant replied, "Probably." R. 351:152; St. Exh. 15 at 10. In fact, a tire print taken from the Smith property was consistent with the treads on the rear passenger tire of defendant's Buick. R. 351:139, 158, 219, 221.

Defendant could not remember anything about the Kerksiek fire. R. 351:151.

After the interview, defendant was transported to the Beaver County Jail (R. 351:152). On the way, Sergeant Noel suggested that, if defendant was sorry for what he had done, he should write a letter of apology (R. 351:156). When they arrived at the county jail, Sergeant Noel provided defendant with a pencil and some paper to do so (R.

351:156). Defendant then wrote a letter "[t]o everyone that lost some[thing]" explaining "how truly sorry I am" (R. 351:157; St. Exh. 10).

Shortly thereafter, defendant made a telephone call to his mother (R. 351:152). During the call, which was recorded, defendant's mother said, "Tell me this is not true" (R. 351:155; St. Exh. 14-A at 1). When defendant said it was, his mother asked, "Are you sure you did [it]?" (R. 351:155; St. Exh. 14-A at 2). Defendant responded, "Yes, because it burned up my clothes" (R. 351:155; St. Exh. 14-A at 2).

Defendant's motion to suppress. Before trial, defendant filed a motion to suppress his statements to police officers on the day he was arrested, statements to his mother during a telephone call later that day, and his letter of apology. R. 108-10, 114-20; R. 350:8. Defendant asserted that statements made before he was *Mirandized* had to be suppressed because they were made during a custodial interrogation. R. 118-19. He asserted that statements made after he was *Mirandized* had to be suppressed because (a) they were the fruit of a poisonous tree, (b) Sergeant Noel did not stop questioning him after he had asked "whether he could have or needed an attorney," (c) Sergeant Noel had encouraged defendant to take Xanax before the formal interview and defendant was "in a drugged state" thereafter, and (d) his statements had been coerced by threats from Sergeant Noel concerning his family. R. 116-19. Defendant asserted that his conversation with his mother should be suppressed because it occurred while defendant "was still suffering the effects of the excessive ingestion of [Xanax], and from the duress inflicted through the threat [to his family], and from the unreasonably obtained

confession," and because it "was a private telephone conversation which was illegally and/or unreasonably tapped." R. 116.

At the evidentiary hearing, defendant testified that he "had all my kids plus three of my nieces" in his car and that they "were just going to McDonald's to pick up their mom," when police arrived at his home on August 5 and placed him in handcuffs. R. 350:54. A short while later, Sergeant Noel and Agent Hohbein approached him and began talking with him about the fires. R. 350:48, 66. During that conversation, defendant admitted to committing two of the fires. R. 350:67. Defendant was then read his *Miranda* rights. R. 350:48-49, 67. After his rights were read, defendant "never said nothing at that time. But I was like, yeah, I'll talk to you guys." R. 350:67-68.

However, defendant claimed that he twice subsequently asked Sergeant Noel for an attorney. R. 350:52-53, 57-58, 80-81. The first time was before defendant talked with Deputy Black. R. 350:52-53, 57, 80. The second request came sometime later. R. 350:57-58, 81. Both times, according to defendant, Noel told him that he would have to wait until the court appointed an attorney for him. R. 350:53, 57-58, 81. When asked to clarify exactly what he had said to Noel each time, defendant testified that both times he "asked [Noel] if I should get an attorney." R. 350:57-58.

Defendant also claimed that, throughout his encounter with Noel that day, Noel repeatedly threatened to take his children away from him if he didn't cooperate. R. 350:49, 55-56, 58, 81. According to defendant, Noel made the first threat before defendant talked with Deputy Black. R. 350:49, 55-56, 58.

Next, defendant claimed that, at one point while Sergeant Noel was searching his home, defendant asked Noel if he could take some pills with him. R. 350:69. According to defendant, Noel located defendant's pill bottle, which contained both Paxil and Xanax. R. 350:70. Defendant first claimed that Noel then "handed" some pills to him which he "just swallowed." R. 350:50. Defendant then claimed that Noel just "threw [five or six Xanax] on the counter" and that defendant, who was still handcuffed, ate all of them off of the counter. R. 350:50-51.

Defendant acknowledged that he was reminded of his *Miranda* rights before the taped interview he gave at the Iron County Jail. R. 350:72. He also acknowledged that, after being reminded of his rights, he did not request for an attorney but rather said he was willing to talk. R. 350:72-73. According to defendant, "I kind of figured it didn't matter because I [had already] asked twice for an attorney." R. 350:72. However, defendant also acknowledged that he had "been through quite a few different criminal cases in [his] life," and that he was "familiar with the process." R. 350:72.

Finally, defendant testified that, after the interview, Noel drove him from Iron County to Beaver. R. 350:76. On the way, Noel talked with defendant about writing a letter of apology. R. 350:76. When they arrived at the Beaver County Jail, Noel gave defendant paper and a pencil to write the letter. R. 350:76. Defendant wrote the letter almost immediately while by himself in a holding cell. R. 350:77. Either "right before or right after that," defendant called his mother. R. 350:77. He did not recall reading the

sign above the telephone warning that calls may be recorded. R. 350:77. According to defendant, Noel "was standing right next to me" during the call. R. 350:79.

Defendant's wife testified that, after arriving home on August 5, she heard defendant ask about an attorney twice just before he was put into Noel's vehicle. R. 350:83-84. The first time, defendant "asked if he should get him a lawyer or have me contact a lawyer." R. 350:83. The second time, defendant asked, "My wife doesn't need to get me a lawyer?" R. 350:84. Both times, according to defendant's wife, Noel told defendant that "[t]he judge will let you know if you need a lawyer." R. 250:84.

Defendant's wife also claimed that, shortly after she arrived home, Sergeant Noel told her that "if you say anything to [defendant] I will arrest you and I will put your kids in a state home until we get this figured out." R. 350:85-86. Noel referenced defendant's children directly to defendant in another conversation a short while later. R. 350:87.

Finally, defendant's wife recalled asking Sergeant Noel shortly before defendant was taken away whether he could take his medication with him. R. 350:88. When Noel said he could, defendant's wife retrieved defendant's medication from the house "and brought it back out and gave it to Officer Noel." R. 350:88.

Sergeant Noel testified that when he arrived at defendant's home on August 5, he and Agent Hohbein approached defendant, who was already in handcuffs, and "explained to him that I had a warrant and that I had known him for many years" and that "I knew that he would cooperate with us." R. 350:13, 15. Defendant "looked down at the ground" and said, "'Yeah, I took out Blackner's and Roland's for sure, but I didn't set

any of the others.'" R. 350:15. Noel then gave defendant his *Miranda* warning. R. 350:16, 36. Defendant said he was willing to talk. R. 350:19.

Noel testified that at no time during the search or subsequent interview did defendant request an attorney. R. 350:16, 29. The only conversation on the issue occurred while Noel was driving defendant to Beaver after his recorded interview. Noel testified that, on the way, defendant asked what was going to happen next. R. 350:20. Noel explained "what would happen as far as him seeing a judge, being arraigned, what the charges would be . . . and how he would obtain an attorney." R. 350:20, 29

Moreover, at no time did Noel tell defendant that unless defendant confessed to the crimes, his children would be placed in foster care. R. 350:32. Rather, Noel testified that, when they arrived, they "wanted to find [defendant's] wife as soon as possible because the children were there," that Noel ordered a deputy to pick defendant's wife up from her job, and that, when she arrived, "[s]he took custody of the children." R. 350:31.

Noel then testified that, if defendant had told him about medication he needed to take, Noel would have gotten the bottle for him and allowed him to take it with him but would not have given him any pills. R. 350:33, 109. Noel did not recall defendant taking any medication. R. 350:33.

Finally, Noel testified that he was not near defendant when defendant telephoned his mother. R. 350:22. However, a sign just above the telephone clearly informed callers that calls from the phone were subject to recording. R. 350:22.

Agent Hohbein testified that he arrived at defendant's home to serve the search warrant just after an Iron County deputy had arrived and placed defendant in handcuffs. R. 350:101. Hohbein and Sergeant Noel then took defendant off to the side to talk. R. 350:95, 101. During the conversation that ensued, Hohbein asked defendant why he had set the fires. R. 350:97. Defendant responded, "'I took out Blackner's and Roland's for sure but did not set any of the others.'" R. 350:97. Defendant was asked to repeat the statement and was then read his *Miranda* rights. R. 350:97.

Hohbein testified that he was with defendant for "the vast majority of time" they were at defendant's home and that he "[a]bsolutely" never heard defendant ask about an attorney. R. 350:97, 103, 105. Moreover, at no time did defendant request an attorney during the subsequent interview at the Iron County Jail. R. 350:104. Hohbein also "absolutely" did not hear any statements from Noel telling defendant that he had to cooperate or his children would be taken from him. R. 350:98. Finally, Hohbein recalled defendant's wife bringing out a bottle of pills for defendant when he was being placed in a police car for transport. R. 350:98. Hohbein did not see defendant ingest any pills. R. 350:98.

Deputy Black testified that, when he arrived at the search site, defendant was talking with Sergeant Noel and Agent Hohbein near Sergeant Noel's truck. R. 350:43. Noel approached Black and told him that defendant had confessed and was going to cooperate. R. 350:44. Black asked if defendant was "under *Miranda*," and Noel said, "yes." R. 350:44. Black then walked over to defendant and asked what was going on. R.

350:44. Defendant said something about being a "dumb ass," that Roland owed him money, and that he figured "it was worth about a haystack." R. 350:44.

Black recalled a conversation about needing to contact defendant's wife so that she could be there for the children, but did not recall the exact conversation. R. 350:46. Black did not see any pills that night. R. 350:46. He never heard defendant ask about an attorney. R. 350:46.

Trial court's ruling. In its written Memorandum Opinion, the trial court found, based on Agent Hohbein's testimony, that defendant's initial statement to Sergeant Noel and Agent Hohbein "was the product of police questioning prior to a *Miranda* warning." R. 215.

The court then made findings concerning whether defendant was "threatened with the loss of his children if he did not talk to the officers" and whether Sergeant Noel "allow[ed] the defendant to ingest 'several' pills which affected the defendant's mental state during the later questioning at the Sheriff's Office." R. 214, 215. Concerning both these issues, the trial court "[was] convinced that the defendant is misrepresenting the facts." R. 214, 215. On the first issue, the court found that "[n]othing in the evidence indicates any intent o[n] the part of the officers to remove the children from the care of their mother." R. 215. On the second issue, the court found that "[t]he testimony of the defendant is contradicted by the testimony of his wife and Sgt. Noel." R. 214.

The court next considered whether defendant was "given proper notice that his statements to his mother . . . were likely to be overheard . . . and recorded." R. 214. The

court found that, where a sign over the phone informed defendant that his call might be recorded, defendant "[k]new that he was risking being overheard and perhaps recorded." R. 213. The court also found that defendant "was not under the supervision of Sgt. Noel" while the telephone call was made. R. 213.

The court then made the following additional findings:

> [T]he evidence clearly indicates that [after defendant was] advised of his *Miranda* rights[,] . . . he made repeated voluntary statements to law enforcement officers, to his mother, and to the victims implicating himself in setting of the fires. The court has found no evidence that he was under any pressure or deception when he made those later statements . . . At the time he made the statements to Deputy Black, to his mother, to officers at the jail, and to the victims, he knew that he had the right to remain silent *and to have the advice of an attorney, but he chose to talk about the case voluntarily*. His motion to suppress seems motivated by regret about his decision in view of the dire consequences that he is facing.

R. 213 (emphasis added).

The court concluded that defendant's pre-*Miranda* statements to Sergeant Noel and Agent Hohbein "must be suppressed during the State's case in chief." R. 213. However,

> [s]ince the initial statements, and all those that followed the *Miranda* warning, were free of any coercive or deceptive activity by the police, the later statements are admissible during the State's case in chief. The first statement was the product of a technical violation of *Miranda* at most, and should not result in the suppression of statements given later after the defendant had been advised of his rights *and had been given time to consider the importance of the warning*.

R. 212 (emphasis added).

SUMMARY OF THE ARGUMENT

Defendant claims that the trial court erred in denying his motion to suppress without making explicit findings on his claim that his post-*Miranda* statements had to be suppressed because he had invoked his right to counsel. However, where neither defendant's factual summary nor his legal analysis are sufficient to reach his claim, this Court should reject defendant's claim as inadequately briefed.

ARGUMENT

THIS COURT SHOULD REJECT DEFENDANT'S CLAIM THAT THE TRIAL COURT IMPROPERLY DENIED HIS MOTION TO SUPPRESS WHERE DEFENDANT'S TWO-SENTENCE RECITATION OF THE RELEVANT FACTS AND HIS SIX-SENTENCE ARGUMENT RENDER HIS CLAIM INADEQUATELY BRIEFED

Defendant claims that the trial court "erred in denying in part" his motion to suppress because the court "failed to address" and make findings on his claim that his post-*Miranda* statements "were given after the Defendant invoked the right to counsel." Aplt. Br. at 4. Defendant claims that "because of the conflict in testimony between the Defendant and the officer, there is ambiguity which makes the assumption of a finding in favor of the State unreasonable, and this Court should remand for a new trial." Aplt. Br. at 4. This Court should reject defendant's claim as inadequately briefed.

Rule 24(a)(9), Utah Rules of Appellate Procedure, provides that a defendant's brief "shall contain . . . citations to the authorities, statutes, and parts of the record relied on." Utah R. App. P. 24(a)(9). Under this rule, "a reviewing court is entitled to have the

issues clearly defined with pertinent authority cited and is not simply a depository in which the appealing party may dump the burden of argument and research." *State v. Gomez*, 2002 UT 120, ¶ 20, 63 P.3d 72 (quoting *State v. Bishop*, 753 P.2d 439, 450 (Utah 1988) (citation and internal quotation marks omitted)); *see also State v. Honie*, 2002 UT 4, ¶ 67, 57 P.3d 977 (rejecting inadequately briefed claim in death penalty case), *cert. denied*, 123 S.Ct. 257; *State v. Bisner*, 2001 UT 99, ¶ 46 n.5, 37 P.3d 1073. Thus, "[i]mplicitly," this rule "requires not just bald citation to authority but development of that authority and reasoned analysis based on that authority." *State v. Thomas*, 961 P.2d 299, 305 (Utah 1998); *see also State v. Wareham*, 772 P.2d 960, 966 (Utah 1989). In short, this Court simply "will not engage in constructing arguments 'out of whole cloth' on behalf of defendants." *State v. Webb*, 790 P.2d 65, 72 n.2 (Utah App. 1990).

Consequently, when the appellant fails to present any relevant authority, this Court will "decline to find it for him." *State v. Pritchett*, 2003 UT 24, ¶ 12, 69 P.3d 1278. Similarly, "[w]hen a party fails to offer any meaningful analysis, [this Court will] decline to reach the merits." *State v. Garner*, 2002 UT App 234, ¶ 12, 52 P.3d 467. In fact, "Utah courts routinely decline to considered inadequately briefed arguments." *State v. Bryant*, 965 P.2d 539, 549 (Utah App. 1998); *see also State v. Norris*, 2001 UT 104, ¶ 28, 48 P.3d 872; *State v. Sloan*, 2003 UT App 170, ¶ 13, 72 P.3d 138.

Here, defendant's summary of the facts presented at the evidentiary hearing on his suppression motion consists entirely of the following two sentences: "The Defendant did testify at the hearing on the suppression motion that he did in fact invoke his right to

counsel. The officer to whom the invocation request was allegedly made, Sergeant Cameron Noel, denied that the invocation was made." Aplt. Br. at 3 (citation to record omitted).

This summary is inadequate under rule 24(a)(9). First, defendant's summary does not accurately reflect his testimony at the motion hearing, where defendant in fact clarified that he never actually asked Sergeant Noel for an attorney, but, rather, only asked whether he should get one. R. 350:57-58. Moreover, defendant's summary completely ignores all the testimony given by defendant that the trial court expressly found not credible. R. 213-15; R. 350:49, 50-51, 55-56, 58, 69-70, 79, 81. Finally, defendant's summary does not include any reference to the two other officers whose testimony, in addition to Noel's, contradicted defendant's concerning whether defendant ever asked about an attorney. R. 350:46, 97-98, 103-05. Because all of these facts are relevant to defendant's claim on appeal, defendant's two-sentence factual summary is inadequate under rule 24(a)(9). *See, e.g., Gomez*, 2002 UT 120, ¶ 20 (holding that appellate court "is entitled to have the issues clearly defined").

Moreover, defendant's argument consists of exactly six sentences with citation to one case, *State v. Ramirez*, 817 P.2d 774, 787 (Utah 1991) (addressing when this Court will assume that the trial court made the necessary findings to support its rulings), after which defendant summarily concludes that, "because of the conflict in testimony between the Defendant and the officer, there is ambiguity which makes the assumption of a finding in favor of the State unreasonable." Aplt. Br. at 4.

Nowhere does defendant set forth the law governing a defendant's right to counsel, let alone explain why his alleged query as to whether he should retain an attorney was sufficient to invoke that right. *See Pritchett*, 2003 UT 24, ¶ 12 (holding that when appellant fails to present any relevant authority, this Court will "decline to find it for him"); *Webb*, 790 P.2d at 72 n.2 (holding this Court simply "will not engage in constructing arguments 'out of whole cloth' on behalf of defendants"); *see also State v. Leyva*, 951 P.2d 738, 742-43 (Utah 1997) (recognizing that under *Davis v. United States*, 512 U.S. 452, 459 (1994), once suspect waives his *Miranda* rights, law enforcement officers have no duty to stop questioning suspect unless he "'unambiguously'" reinvokes his rights); *see also Mitchell v. Gibson*, 262 F.3d 1036, 1056 (10th Cir. 2001) (holding that, where defendant had prior experience with criminal system, defendant's statement "asking police whether he needed an attorney is not . . . a sufficiently clear request for counsel to require the cessation of questioning under *Davis*"); *State v. Ninci*, 936 P.2d 1364, 1381 (Kan. 1997) (holding that, where defendant "simply asked the officer whether the officer thought [he] should get an attorney," defendant's question was insufficient to reinvoke his right to counsel); *State v. Jones*, 914 S.W.2d 852, 860 (Mo. App. 1996) (holding that defendant "did not unequivocally state that he wanted an attorney" when he asked, "'Do I need an attorney?'"); *State v. Taylor*, 759 N.E.2d 1281, 1285 (Ohio App.) ("[E]ven assuming that Taylor's allegation [that he referenced an attorney] is true, the statement 'Do I need an attorney?' is equivocal and ambiguous" and, thus, "the law does not require that the police cease questioning"), *cert. denied*, 755 N.E.2d 352 (Ohio 2001).

In addition, nowhere does defendant explain why a finding that defendant did not invoke his right to counsel is not implicit in the trial court's ruling where the court both found defendant not credible on the issues it specifically addressed and found that, at the time defendant made his post-*Miranda* statements, "he knew that he had the right . . . *to have the advice of an attorney, but he chose to talk about the case voluntarily.*" R. 213 (emphasis added). *See Thomas*, 961 P.2d at 305 (holding rule 24(a)(9) "requires not just bald citation to authority but development of that authority and reasoned analysis based on that authority"); *Garner,* 2002 UT App 234, ¶ 12 ("When a party fails to offer any meaningful analysis, [the court will] decline to reach the merits."). *Cf. Ramirez*, 817 P.2d at 787 (holding that, "in cases in which factual issues are presented to and must be resolved by the trial court but no findings of fact appear in the record, we 'assume that the trier of facts found them in accord with its decision'").

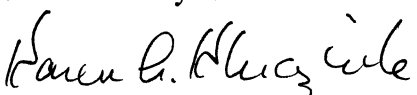
Because defendant has provided this Court with neither the factual background nor the legal analysis necessary to address his claim, this Court should reject defendant's claim as inadequately briefed.

CONCLUSION

Based on the foregoing, the State asks this Court to affirm defendant's convictions.

RESPECTFULLY SUBMITTED 1 November 2004.

MARK L. SHURTLEFF
Utah Attorney General



KAREN A. KLUCZNIK
Assistant Attorney General

CERTIFICATE OF MAILING

I certify that on 1 November 2004, I caused to be mailed, by U.S. Mail, postage prepaid, two accurate copies of this ***BRIEF OF APPELLEE*** to Randall C. Allen, Barnes & Allen, LLP, Depot Plaza, 415 North Main, Suite 303, Cedar City, Utah 84720, Attorney for Appellant.